



**Headquarters:** 600 Grand Ave  
Suite 410  
Oakland, CA 94610-3561

510.663.4000 tel  
510.663.4099 fax

1127 11th St  
Suite 425  
Sacramento, CA 95814-3809

916.444.3676 tel  
916.444.7693 fax

3303 Wilshire Blvd  
Suite 415  
Los Angeles, CA 90010-1798

213.736.1770 tel  
213.736.1777 fax

April 9, 2007

Ms. Tami R. Bogert  
General Counsel, Public Employment Relations Board  
1031 18<sup>th</sup> Street  
Sacramento, CA 95184

**RE: Comments on PERB's Proposed Revisions to "Proof of Support" Regulations**

Dear Ms. Bogert:

The California Labor Federation, AFL-CIO, writes on behalf of our two million union members in California, nearly half of whom work in the public sector, to express our strong opposition to the proposed PERB revisions to its "Proof of Support" regulations. In our judgment, these regulations are inconsistent with federal labor law, conflict with state law providing for card check recognition in the public sector, and, if adopted, would make the card check recognition process virtually impossible.

We are most vehemently opposed to the following two provisions:

**(1) The Election Waiver Language Requirement is Unnecessary and Inconsistent with the Law**

The requirement in Section 32700(a)(1) that an authorization card must state that an employee understands there may be no union election is entirely inappropriate. This language reverses settled law in the private sector, which simply requires that an authorization card clearly authorize the union to represent the signer for purposes of collective bargaining. The National Labor Relations Board clearly expressed this principle in *Levi Strauss & Co.*, holding that "...there is, we believe, in the case of clearly expressed authorization cards, as in the case of other signed instruments, no valid basis in reason or law for denying face value to the signed cards, absent affirmative proof of misrepresentation or coercion." (*Levi Strauss & Co.*, 172 NLRB 737, (1968)). The United States Supreme Court affirmed this approach in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), finding that an unambiguous authorization card is sufficient unless it is proved that an employee was told that the card would be used solely to obtain an election.

In addition to conflicting with federal labor law, this requirement is inconsistent with state law and was specifically rejected by the California Legislature when it passed legislation establishing mandatory card check recognition in the public sector. Current law allows proof of majority support to be established through dues deduction forms, membership

lists, and petitions, among other types of documents. (California Government Code Section 3544.) The proposed revision would force labor unions to adopt entirely new documents to use as authorization cards, and require additional signature gathering for dues deduction and membership cards. Such an imposition was not contemplated when amendments to MMBA, EERA, and HEERA mandating card check recognition were passed. In fact, when Assembly Member Loni Hancock introduced AB 1230 in 2003, this very amendment was proposed by an opponent of the bill and was specifically rejected by the author.

The PERB Board does not have the authority to override the will of the Legislature or to reverse current law as it relates to the requirements for an authorization card. The Legislature has repeatedly deemed the card check recognition process valid and appropriate as a means of demonstrating majority support for union recognition. This is evidenced by the provision for mandatory card check in the statutes governing virtually every type of public employee, whether within a local agency, an institute of higher education, or a trial court. These regulations undermine and conflict with that legislative determination and with current law.

**(2) The Revocation of Support Process as Proposed is Contrary to Law, Exceeds the PERB's Authority, and Would Make Card Check Recognition Nearly Impossible**

Current law does not provide for the revocation of proof of support so this proposed rule would fundamentally change the statutes as passed by the Legislature. Such an action is not within the PERB Board's authority. While the Board recently established the concept of revocation under the MMBA, that decision was largely based on the way that card check is done under MMBA, which is significantly different from the process under EERA and HEERA. (*Antelope Valley Health Care District*, PERB Decision 1816-M, 30 PERC 60 (2006)). It is therefore inappropriate to apply beyond the MMBA context or outside the fact-specific setting that gave rise to a right to revoke in *Antelope Valley*.

Should the PERB Board maintain the need for a revocation process, the one proposed is simply unacceptable. Under 32705, 61025, 81025, and 91205 of the proposed regulations, a revocation of support would be permitted up to 25 days after a petition for recognition is filed. Current law provides that an employer must grant recognition upon a request by the union and a demonstration of proof of support by a majority of workers. This proposal would give employers a new window of opportunity in which to pressure workers to revoke their support. Such employer intimidation is precisely the reason that card check laws were passed so this proposed change undermines the fundamental goal of card check recognition.

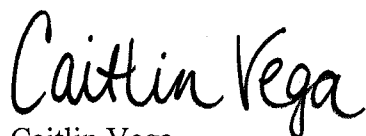
Furthermore, federal law is clear that a determination of majority status must be made at a particular point in time. Therefore, if an employee revokes after a demand for recognition, it should have no effect. (*Quality Markets, Inc.*, 160 NLRB 44 (1966)). Nor does an employee's subsequent resignation invalidate the inclusion of their authorization card to show majority support. It is simply not possible or practical to require a union to establish majority support on an ongoing basis and such an approach has never before been contemplated.

Even more disturbing, the proposed rule on revocation does not even require that a revocation be directed to the union. To permit a revocation without ensuring that the union knows which employee has revoked makes it impossible for a union to effectively utilize the card check process because they can have no accurate assessment of whether and at what point in time the petition for recognition has majority support. This result directly undermines the California Legislature's intent in providing for card check recognition and calls into question the motivations of the drafters of these regulations. A proposal that so drastically restricts the ability of a union to conduct a fair and democratic card check recognition process undermines the public policy adopted by the state and jeopardizes the right of California workers to join a union.

A revocation process in which the revocation is not shared with the union also runs counter to federal labor law, which requires that revocations be directed to the union. (*J.P. Stevens & Co.*, 244 NLRB 407 (1966)). The federal rule reflects the fact that many revocations are prompted by employer misconduct. If the union is not able to investigate why certain employees are revoking support and workers are afraid to come forward, any such misconduct will not be discovered and, in fact, employer coercion will be incentivized. It is essential to the integrity of the process that the union has the opportunity to discover any employer interference that is resulting in revocations of support.

We urge the PERB Board to rethink these deeply flawed regulations that seem designed to create so many obstacles to card check recognition that unions simply abandon the process. Instead, we hope you will review the suggested amendments from many of our affiliated unions that would address any need for clarity in this area without making it harder for workers to win union recognition. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Caitlin Vega". The script is fluid and cursive, with the first name "Caitlin" and last name "Vega" clearly distinguishable.

Caitlin Vega  
Legislative Advocate

CV: sm  
OPEIU 3 AFL CIO (31)